

JILLEA A. NEILSEN)	
Claimant)	
VS.)	
)	Docket No. 222,771
ELF CHILDREN’S CENTER, INC.)	
Respondent)	
AND)	
)	
ITT HARTFORD)	
Insurance Carrier)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

The Appeals Board first finds the evidence indicates claimant did make a timely written claim. Claimant injured her low back when she bent over to get some paper from a cubbyhole in the wall in the course of her employment with respondent. Respondent's brief suggests this occurred on May 28, 1996. The medical records attached to the preliminary hearing transcript indicate, and the Appeals Board finds, that the accident occurred on March 28, 1996. Claimant immediately notified her employer of the injury and was referred to the Wichita Clinic Immediate Care Facility. She was given pain and anti-inflammatory medicines. She was taken off work for four to five days and then went initially on her own to her family physician, John L. Kready, M.D. Dr. Kready then, for a period of time, became the authorized treating physician.

The only evidence regarding the written claim is the testimony given by claimant at the preliminary hearing. She testifies that, after giving notice of the accident, respondent presented her with papers or documents to complete. She testified that she filled out four or five, including a couple on which she described the accident. She indicates that she was told these were for workers compensation benefits and was told that they would be turned in. Respondent cites case law indicating that both the claimant and the party receiving the claim must intend that it constitutes a written claim for compensation. Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973). Claimant testifies that she intended to be making a claim for compensation. Respondent's understanding is evidenced by the fact that they began paying workers compensation benefits after the documents were submitted. At this point, the Appeals Board finds that the evidence is sufficient to satisfy claimant's burden and finds that timely written claim was given.

The Appeals Board also finds the record establishes that claimant's injuries arose out of and in the course of her employment for respondent. Claimant testified to a specific onset of pain in her course of employment for respondent. She, thereafter, was given a reduced schedule and last worked for respondent May 3, 1996. On May 6, 1996, she began working for another employer, Downtown Day Care. Claimant testifies that she continued to have pain at the time she left her employment for respondent. She also testifies that nothing occurred in the course of her employment for the new employer which caused the condition to worsen. According to claimant, she simply continued to have problems from the original injury.

In early 1997, Dr. Kready referred claimant for an MRI. The MRI, performed at the direction of Leonard A. Klafta, M.D., revealed a small disk herniation at L5-S1. Dr. Kready has recommended additional treatment. The Appeals Board finds the evidence establishes by a preponderance of the credible evidence that claimant sustained an injury in her course of employment with respondent and as a result of that injury claimant is in need of additional medical treatment.

WHEREFORE, the Appeals Board finds the Order by Administrative Law Judge John D. Clark, dated July 22, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director